

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDITHA LOPEZ QUIRINO,

Plaintiff,

-v-

THE NEW JEWISH HOME, *et al.*,

Defendants.

19 Civ. 5778 (PAE) (DF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

On June 20, 2019, plaintiff Editha Lopez Quirino (“Quirino”) brought this case *pro se*, alleging age and sex discrimination by defendants The New Jewish Home (“TNJH”), Maia Santarina, and Jenifer Tutone. Dkt. 1. Defendants moved to dismiss Quirino’s claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Dkt. 34. After a referral for a Report and Recommendation on that motion to the Hon. Debra Freeman, United States Magistrate Judge, and Judge Freeman’s Report and Recommendation (“First Report”) recommending that the motion be granted in full, the Court adopted the First Report, with one modification: that Quirino be granted leave to replead a single claim in an amended complaint, to wit, that TNJH, her former employer, had failed to promote her in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.* (“ADEA”). Dkt. 45.

On April 19, 2021, Quirino, by then counseled, filed an amended complaint. It, however, did not assert an ADEA claim. Instead, it improperly reasserted Quirino’s original claims, and sought to add new claims under Title VII, New York State Human Rights Law, and New York City Human Rights Law. *See* Dkt. 46.

Currently pending is TNJH’s motion to dismiss Quirino’s amended complaint under Federal Rules of Civil Procedure 12(b)(1), 12(b)(5), and 12(b)(6). Dkt. 47 (“Motion”). This

Motion, too, was referred for a Report and Recommendation to Judge Freeman. Dkt. 50. On October 29, 2021, after Quirino failed to oppose the Motion, Judge Freeman issued an order directing Quirino to file any opposition by November 19, 2021. Dkt. 51. Quirino did not do so. Before the Court now is Judge Freeman's December 29, 2021 Report and Recommendation, recommending the Court grant the motion to dismiss the amended complaint. Dkt. 52 ("Second Report"). The Court incorporates by reference the summary of the facts provided in the Second Report. For the following reasons, the Court adopts the Second Report's recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).


As no party has submitted objections to the Second Report, review for clear error is appropriate. Careful review of Judge Freeman's thorough and well-reasoned Second Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Second Report explicitly states that "failure to file objections within fourteen (14) will result in a waiver of objections and will preclude appellate review," Second Report at 25, the parties'

failure to object operates as a waiver of appellate review.¹ See *Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court grants TNJH's Motion and dismisses Quirino's amended complaint. The Clerk of Court is respectfully directed to close the case.

SO ORDERED.


PAUL A. ENGELMAYER
United States District Judge

Dated: January 14, 2022
New York, New York

¹ Plaintiff Quirino is now counseled. Quirino was therefore on notice when the Second Report was filed on the docket on December 29, 2021, and did not require the three-day extension pursuant to Federal Rule of Civil Procedure 6 for parties served by mail.